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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/891,256

06/27/2001

Ake R. Lindahl

28069-531001US

1609

35437

7590

09/17/2009

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EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

09/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/891,256</p>	<p>Applicant(s) LINDAHL, AKE R.</p>	
	<p>Examiner John Pak</p>	<p>Art Unit 1616</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 September 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/John Pak/
Primary Examiner, Art Unit 1616

Continuation of 3. NOTE: Compositions 6, 7 and 11 as set forth in specification Table 3 were indicated as being allowable in the Office action of 3/5/09, wherein it was further noted that there was at that time no single claim that was directed to such subject matter. In response, applicant proposes to cancel claims 1-49 and add claims 50-104. First, applicant has added more claims than those that have been canceled. Second, the claim changes are quite extensive and they require further consideration. Third, potential new matter issue is raised because applicant is attempting to take the compositions 6, 7 and 11 of Table 3 and expanding its scope by, inter alia, reciting amounts in terms of "about." The compositions of Table 3 were not originally disclosed to cover amounts in terms of "about." With such specific ingredients and specific amounts as in compositions 6, 7 and 11, wherein acceptable initial pH and storage pH are obtained, it would not have been reasonably conveyed that variations in amounts was disclosed for compositions 6, 7 and 11. One of ordinary skill in the art would not be able to ascertain the metes and bounds of "about" under the present fact situation because (a) no disclosure of "about" (what does it cover and not cover?) was disclosed in the context of a composition as specific as compositions 6, 7 and 11, and (b) it would not be predictable whether the data obtained with the specific combination and proportions of ingredients in Table 3 could be repeated with different combinations and proportions. Fourth, in claim 50 for example, 1-35 wt% of at least one monoglyceride is recited, but at least one monoglyceride is about 21 wt% 1-glycerolmonomyristate. This is confusing language since the 21 wt% monoglyceride would seem to preclude the lower ranges of 1-35 wt%. Fifth, in claim 50 for example, the monoglyceride component (ii) is not commensurate in scope with compositions 6, 7 and 11 because those compositions specifically contain 7 wt% 1-glyceryl monolaurate and 21 wt% 1-glyceryl monomyristate, both of which are in crystalline form. In other independent claims, applicant attempts to vary some weight percentages or not specifying weight percentages of some of the components of compositions 6, 7 and 11. Again, such amendments would raise and require further consideration as to new matter and whether the data for compositions 6, 7 and 11 could support nonobviousness of expanded scope, as proposed herein. At this after-final stage of prosecution, such extensive amendments and further consideration of new issues raised are deemed untimely.

Continuation of 11. does NOT place the application in condition for allowance because: the claims have not been amended to be limited strictly to compositions 6, 7 and 11 of specification Table 3, as fully discussed in the Note to item 3 of this Advisory Action, which resulted in the non-entry of the proposed after-final amendments. For the reasons of record, claims 1-49 remain rejected.